

APPEAL NO. 022755
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 14, 2002. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to include herniated lumbar discs. In its appeal, the appellant (carrier) argues that the hearing officer's determination is against the great weight of the evidence. In addition, the carrier asserts error in the hearing officer's having denied its Motion to Take a Deposition on Written Questions from several doctors and its Motion for a Continuance. In his response, the claimant urges affirmance and contends that the hearing officer did not abuse his discretion in denying the carrier's motions.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, extends to include lumbar herniated discs. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier also argues that the hearing officer erred in denying its Motion to Take Deposition on Written Questions from several doctors and in denying its Motion for a Continuance. Principally, the carrier argues that it was prevented from fully presenting its case because it was not permitted to forward the deposition questions and because it was not granted a continuance after the claimant failed to sign a release, which the carrier argues would have permitted it to contact the doctors and seek additional information from them. We find no merit in this assertion. The carrier argued that the claimant's herniated discs were not caused by the _____, injury because of the delayed manifestation of back complaints in the claimant's medical records. The claimant's medical records were admitted in evidence from each of the doctors that the carrier requested to depose. It was able to argue the absence of complaints at the hearing and reference the claimant's medical records in so doing. In addition, the carrier was able to elicit testimony from its witness that the claimant had told him that he had injured his back moving furniture in his home and several others following a flood. The claimant denied that he moved any furniture and that he injured

his back in any of his other activities following the flood. Accordingly, we cannot agree that the carrier was prejudiced in the presentation of its case by the hearing officer's denial of the motions to depose the doctors and for a continuance. To the contrary, the carrier was able to fully present its case and the hearing officer simply chose to credit the claimant's evidence over the evidence from the carrier. We perceive no error in the hearing officer's denial of the motions.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge